IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 21406 of 2007(W)

PETITIONER:

P.V.SARAMMA,
JUNIOR PUBLIC HEALTH NURSE GR-I, P.H.CENTRE,
VANNAMADA, PALAKKAD DIST.
(NOW UNDER ORDERS OF TRANSFER TO P.H.C.,
PERUMATTY).

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **THE DIRECTOR OF HEALTH SERVICES,**
   THIRUVANANTHAPURAM.

2. **THE DISTRICT MEDICAL OFFICER OF HEALTH,**
   PALAKKAD.

3. **SMT.GRIGERIAMMAL.S.,**
   JUNIOR PUBLIC HEALTH NURSE,P.H.CENTRE, NANNIODE,
   PALAKKAD DISTRICT, (NOW UNDER ORDERS OF TRANSFER
   TO P.H.C., VANNAMADA).

4. **K.PARVATHY,**
   JUNIOR PUBLIC HEALTH NURSE,
   P.H.CENTRE, PERUMATTY (NOW UNDER ORDERS OF
   TRANSFER TO P.H.C., NANNIODE).

BY ADV. SRI.P.R.RAMACHANDRA MENON
BY GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C) NO.21406/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 29.5.98 OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE ORDER NO.AD/3565/07, DT. 9.7.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE GUIDELINES FOR TRANSFER ISSUED AS PER ORDER DT. 10TH SEPT. 2004.

EXT.P4:- COPY OF THE ORDER DT. 16.8.07 OF THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE APPOINTEMENT ORDER NO.A4/19158/93 DT. 22.2.99 ISSUED BY THE 2ND RESPONDENT.

EXT.R3(b):- COPY OF THE REPRESENTATION/APPEAL DT. 1.6.07 FILED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT THROUGH PROPER CHANNEL.

/TRUE COPY/

P.S. TO JUDGE

tss

V.GIRI, J.

W.P.(C).No.21406 of 2007 W

Dated this the 6th day of September, 2007.

JUDGMENT

The petitioner and respondents 3 and 4 are Junior Public Health Nurses under the 2nd respondent District Medical Officer, Palakkad. The petitioner, had been posted at the Primary Health Centre, Vannamada since 25.9.1998. The 3rd respondent, according to the petitioner, was functioning at the Primary Health Centre, Vannamada, with effect from 1.7.1991, on a provisional basis. She was appointed on a regular basis and she continues her services at Vannamada, with effect from 22.2.1999.

2. While so, one T.A.Mini, who was working at Primary Health Centre, Puthussery, was transferred and posted at Primary Health Centre, Vannamada. Apparently, it was to accommodate Smt.Mini, that the 3rd respondent was transferred to Nanniyode. The 3rd respondent objected to the same. Accepting the objection of the 3rd respondent, the District Medical Officer issued Ext.P2 order. The objection of the 3rd respondent was accepted and posted back at Primary Health Centre, Vannamada. Consequently, the petitioner was posted to

Primary Health Centre, Perumatty. It is Ext.P2 which is challenged in this writ petition.

3. On 25.7.2007, an interim order was passed by this court after hearing the counsel on both sides. Paragraph 3 of the order is extracted below:

> *"I heard the learned counsel on both sides. If the transfer is ordered under Clause 3 of Ext.P3, I think, the petitioner has a better case. The station seniority may be relevant than service seniority as Clause 3 of Ext.P3 speaks of service in a particular station. In this case, the official respondents have not filed any counter affidavit and therefore, it cannot be ascertained whether the order under Ext.P2 has been issued on other grounds. Having regard to the facts of the case, the second respondent is directed to consider the claim of the petitioner for retention at Vannamada and pass orders thereon in accordance with the transfer norms, taking into account, the contentions of respondents 3 and 4. A speaking order shall be passed by the second respondent within one month from the date of receipt of a copy of this order. The interim order granted by this Court will remain in force for a period of six weeks from today. The petitioner shall produce a copy of this order before the second respondent within one week from today."*

4. Pursuant to the afore-mentioned interim order, the District Medical Officer considered the issue, after hearing both sides and proceeded to pass Ext.P4 order produced along

with an application for amendment of the writ petition. The District Medical Officer proceeded to find that the general transfers of the year 2007, by which the 3rd respondent was transferred to Nanniyode and Smt.Mini was transferred and posted at Vannamada, was issued strictly observing the transfer norms. But in so transferring the 3rd respondent out of Vannamada, the length of service of the petitioner on the one hand and the 3rd respondent on the other at Vannamada was not taken into account. When this lapse was brought to his notice by the 3rd respondent, he issued Ext.P4 order, wherein, it is observed as follows:

> *"The general transfer order read 1st above was issued strictly observing norms. But the circumstances described above leads to the issuance of the order 2nd read above. It was only a rectification of the earlier order in view of the mistake crept in it and it was not an order based on transfer norms. If the earlier order (read 1st) is allowed to remain that will definitely be against the transfer norms.*
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> *The claim of Smt.P.V.Saramma, the petitioner for retention at PHC Vannamada is refused and order 2nd cited above stands upheld. This order will be in force only on the expire of the tenure of interim order passed by the Hon'ble High Court on 25.07.07."*

5. Thus, Ext.P4 order proceeds on the premise that the original transfer of the 3rd respondent, from Vannamada to Nanniyode, while retaining the petitioner at Vannamada, was a mistake which crept into the general transfers of 2007. Apparently, when objection was filed by the 3rd respondent, the mistake was rectified vide Ext.P2 order. The District Medical Officer finds that there is no reason why Ext.P2 should be reviewed. He further finds that if Ext.P2 is reviewed and the original transfer effected under the orders of general transfer is restored, inter se, the petitioner and the 3rd respondent, there would be violation of the transfer norms.

6. Ext.P4 order has also been challenged in the writ petition by way of an amendment.

7. A counter affidavit has been filed by the contesting respondents. A reply affidavit has been filed by the petitioner.

8. I heard Mr.Elvin Peter, learned counsel for the petitioner, Mr.Nandakumar, learned Senior Government Pleader for the official respondents and Mr.P.R.Ramachandra Menon appearing for the 3rd respondent.

9. Learned counsel for the petitioner contends that the premise, on which Ext.P4 is rested, that the criteria for retaining a person in a station is the seniority in the station, does not seems to be correct. As a matter of fact, the 3rd respondent has been working at Vannamada from 1.7.1991, though on a provisional basis, and when she was regularly appointed with effect from 22.2.1999, she continued her service there. He further contends that in the context of the orders relating to transfer of Government employees, the fact that the service prior to 22.2.1999 rendered by the 3rd respondent was provisional, does not make a qualitative change. After all, the stipulation that a Government Servants should not be permitted to remain in one station for long period of time, is based on good sense that such Government servants shall not get very familiarized in one place and if that be so, the nature of the service rendered really makes no difference whatsoever. He contends that the definition of the word '***service***' as contained in the Rule has to be considered textually. He relies on the decisions of this court in **Chellappan Pillai v. State of Kerala {1982 KLT 638}** and **Marakkar v. Kerala Public Service**

Commission {1987(1) KLT 84}, to contend for the position that even '*provisional service*' should be treated as sufficient 'service' in the context of the transfer norms as such.

10. Learned Senior Government Pleader contended that Ext.P4 order, which forms the basis of Ext.P2, does not warrant any interference. Transfer of the petitioner on one hand and the 3rd respondent on the other from Vannamada was necessitated essentially to accommodate an option given by Smt.Mini. When it was a choice among these two persons, the District Medical Officer should have, even at the first instance, looked at the person who has continued in service for a longer time at the same station and in that view of the matter, it was obviously the petitioner, who should have been displaced to accommodate the claim of Smt.Mini. Apparently, a mistake crept in the general transfer order in transferring the 3rd respondent and this was rectified in Ext.P2. Relevant circumstances have been taken into account by the District Medical Officer, after hearing the parties.

11. Learned counsel for the contesting respondent contended that the 'provisional service' rendered by her prior to

the date on which she was regularly advised by the Public Service Commission, cannot be taken into account for the purpose of finding who among the petitioner and the 3rd respondent had served for longer period in the same station. According to him, the word '***service***' in the transfer norms must be confined to "*actual regular service*' borne on a cadre and not '*provisional service'* which does not bring out any benefit as such. He further contended that if the case of the petitioner is to be accepted, this court may have to declare that the '*provisional service'* rendered prior to the regular appointment should also be treated as 'service' for the purpose of transfer norms which, according to him, will lead to anomalous situation. Apart from that, there is no such prayer in the present writ petition.

12. It is true that this court passed an interim order directing the District Medical Officer to consider the claim of the petitioner and the 3rd respondent, in accordance with the transfer norms, taking into account the contentions of respondents 3 and 4. But Ext.P2 was not interfered with by this court while passing the interim order. The observation made by

this court in para 3 of the interim order, naturally, will have to be treated as an expression of a prima facie observation on the merits of the case. The correctness of both Exts.P2 and P4 will, therefore, continue to be relevant at the stage of final hearing of the writ petition.

13. Notwithstanding the rival contentions taken up on either side, in the ultimate analysis, the issue seems to be whether the petitioner or the 3rd respondent should be shifted from Vannamada to Nanniyode or Perumatty, as the case may be. All the three places are falling in Palakkad District. Unless there are serious infirmities in the order of transfer, this court shall be reluctant to interfere with such transfer orders. This court has repeatedly held that transfer norms are guidelines and obviously cannot be equated with statutory rules having the status of law. Deviation from the transfer norms, no doubt, may give rise, to a grievance for a person, who had suffered loss due to such deviation. But, unless cases of gross arbitrariness or mala fides are pleaded and demonstrated, it may not be proper for this court to interfere with the order of transfer as such.

14. A transfer may bring about inconvenience to the Government servant. In given circumstances, a plea of hardship could have some persuasive value in court. But on mere plea of inconvenience, transfer orders cannot be interfered with under Article 226 of the Constitution of India. After all, every person who is under orders of general transfer may be inconvenienced. But, the Supreme Court has time and again stated that transfer is an incidence of service. Therefore, a Government servant will have to put up such inconvenience. The transfer in the present case entails only a posting from Vannamada to Nanniyode, which is situated within 20 to 30 kms with each other. The court is called upon to interfere with a transfer under Article 226 of the Constitution of India; only if gross arbitrariness or male fides is pleaded or demonstrated. I am of the view that no gross arbitrariness or male fides is pleaded or demonstrated in the present writ petition. Violation of the transfer norms is not of such a concrete nature as to necessarily interfere with the order of transfer, which otherwise the District Medical Officer was perfectly competent to issue in the normal course of business. It may definitely not be proper to weigh the relative

inconvenience or disturbance of the parties on a golden scale and come to the conclusion that A or B should be retained at a particular station.

15. In my opinion, a reading of Ext.P4 would demonstrate that the decision making process, which was undertaken by the District Medical Officer pursuant to Ext.P2 order considering the rival claims of the petitioner and 3rd respondent, does not seem to be vitiated. One reason, which has weighed with the District Medical Officer is that, if the relative length of service of the petitioner on the one hand and the 3rd respondent on the other was correctly taken note of by him prior to the issuance of the general transfer order, 2007, he would not have shifted the 3rd respondent out of Vannamada, but he would have, in the ordinary course, shifted the petitioner. Ext.P2 only corrects a mistake, which the District Medical Officer has committed, at the time of general transfer.

16. The contention raised by the learned counsel for the petitioner, that 'service' in the context of the general transfer norms should include 'provisional service' as well, at any rate, does not appeal to me. But, I agree with him when he

says that the term 'service' must be construed textually. This seems to be in tune with the decisions in **Chellappan Pillai v. State of Kerala {1982 KLT 638}** and **Marakkar v. Kerala Public Service Commission {1987(1) KLT 84}**. The decision relied on by the learned Government Pleader reported in **Dr.N.Rajendra Prasad v. The Secretary & Commissioner {2005 (3) KLJ 374}** also takes the same view. Transfer is an incidence of service and therefore, if the word "service" is to be construed, obviously, the '*service*' in question must be one, which is also subject to incidence of transfer as such. 'Provisional service' does not contemplate a transfer and therefore the length of service, provisional in character, would not be relevant for the purpose of applying the transfer norms.

For all these reasons, I am of the view that neither Ext.P2 nor Ext.P4 warrants any interference at the hands of this Court under Article 226. The writ petition fails and it is dismissed.

(V.GIRI)
JUDGE

sk/

V.GIRI, J.

W.P.(C).No.21406 of 2007

JUDGMENT

6TH September, 2007.